

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 FORTRESS SECURE SOLUTIONS,
8 LLC, a Washington Limited Liability
Company,

9 Plaintiff,

10 v.

11 ALARMSIM, LLC, et al.,

12 Defendants.

NO. 4:17-CV-5058-TOR

ORDER ON DEFENDANTS'
MOTIONS TO DISMISS

13
14 BEFORE THE COURT are Defendant AlarmSIM's Motion to Dismiss
15 (ECF No. 17), Defendant Ricky Guthrie Jr.'s Motion to Dismiss (ECF No. 18),
16 Defendant Eduardo Ramirez's Motion to Dismiss (ECF No. 19), and Defendant
17 Ricky D. Guthrie Sr.'s Motion to Dismiss (ECF No. 20). These matters were
18 submitted for consideration without oral argument. The Court has reviewed the
19 record and files herein, and is fully informed. For the reasons discussed below,
20 AlarmSIM's Motion to Dismiss (ECF No. 17) is **DENIED**, Guthrie Jr.'s Motion to

Dismiss (ECF No. 18) is **DENIED**, Ramirez’s Motion to Dismiss (ECF No. 19) is **GRANTED**, and Guthrie Sr.’s Motion to Dismiss (ECF No. 20) is **GRANTED**.

BACKGROUND

On April 28, 2017, Plaintiff filed a Complaint alleging false designation of origin, dilution, intentional and/or negligent misrepresentation, breach of agreement, violations of RCW 19.86 *et seq.*, and civil conspiracy. ECF No. 1 at ¶¶ 27–61. Plaintiff asserts that jurisdiction is proper because AlarmSIM does business in Washington, committed tortious acts in Washington, and has otherwise established sufficient contacts. *Id.* at ¶ 7. Plaintiff also states that venue is proper, in accordance with 28 U.S.C. § 1391(b)(1) and (2), because “a substantial part of the events or omissions giving rise to these claims occurred in this judicial district.” *Id.* at ¶ 8.

On August 18, 2017, each Defendant filed a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(3). ECF Nos. 17; 18; 19; 20. Plaintiff filed a Motion for Leave to Conduct Jurisdictional Discovery (ECF No. 24), which the Court granted. ECF No. 29. Plaintiff later filed a Motion to Compel Discovery (ECF No. 30), and the Court denied this motion. ECF No. 42.

In the instant motions, Defendants seek dismissal for lack of personal jurisdiction and improper venue. ECF Nos. 17; 18; 19; 20.

//

FACTS

The following are the undisputed facts unless otherwise noted. The Plaintiff Fortress Secure Solutions, LLC (“Fortress”) is a Washington limited liability company that owns and operates a retail, internet-based home security alarm business. ECF Nos. 1 at ¶¶ 1, 10; 34 at 2. Defendant AlarmSIM, LLC (“AlarmSIM”) is a North Carolina corporation that was a purveyor of products for sale on the Internet, but has since been administratively dissolved. ECF Nos. 17 at 2–3; 18-1 at ¶ 4. Defendants Rickie Guthrie Jr., Rickie Guthrie Sr., and Eduardo Ramirez were officers, members, and control persons of AlarmSIM. ECF No. 1 at ¶¶ 3–5. Guthrie Jr. was AlarmSIM’s founder and managing member. ECF Nos. 17 at 2; 18-1 at ¶ 5. Guthrie Sr. and Ramirez were named officers on the incorporation paperwork, but Defendants claim these positions were nominal and included no responsibilities to AlarmSIM. ECF Nos. 17 at 2–3; 19-1 at ¶¶ 5–8; 20-1 at ¶¶ 5–8. AlarmSIM sold products throughout the United States and Canada. ECF Nos. 17 at 3; 17-1 at ¶¶ 32–33. While its products were sold and shipped to Washington, AlarmSIM asserts that it was neither the seller nor shipper of these products and it did not solicit business in Washington. ECF No. 17 at 3–4.

On November 11, 2013, Fortress claims that Guthrie Jr. contacted Fortress’ President Michael Hofeditz regarding the compatibility of its SIM cards with

Fortress’ security system. ECF Nos. 34 at 2; 36 at ¶¶ 2, 8.¹ Hofeditz explained to Guthrie Jr. that Fortress was a Washington business and was concerned for its customers in Washington and throughout the country. ECF Nos. 34 at 2–3; 36 at ¶ 8. Hofeditz contends that Guthrie Jr. indicated AlarmSIM offered top notch customer service and would take good care of Fortress’ customers should it recommend AlarmSIM SIM cards. *Id.* Guthrie Jr. then reached out by email on November 12, 2013, offering Fortress a “partnership” where AlarmSIM would supply Fortress with white label SIM cards which would be purchased and reloaded on Fortress’ website. ECF Nos. 34 at 3; 36 at ¶ 9; 36-1 at 2–3 (Ex. A).²

Fortress did not elect to purchase the white label products, but agreed to advertise and promote the SIM card to its customers to be used in conjunction with

¹ Defendants argue that it is irrelevant whether Guthrie Jr. reached out to Plaintiff to enter a business deal because Plaintiff declined the arrangement. ECF No. 44 at 7. It is clear that a phone call did occur between the parties on this date. *See* ECF No. 36-1 at 2 (Ex. A).

² Defendants assert that this email is limited to the offered arrangement and Plaintiff cannot decline the arrangement, then decide to rely on its representations in a new arrangement it created on its own. ECF No. 44 at 7.

1 Fortress security systems. ECF Nos. 34 at 3–4; 36 at ¶ 11. On January 30, 2014,
2 Hofeditz personally purchased an AlarmSIM SIM card for his Fortress Security
3 system. ECF Nos. 34 at 4; 36-1 at 6 (Ex. B).³ In 2014 and 2015, Fortress claims it
4 referred hundreds of customers to AlarmSIM, including over 100 residents of
5 Washington. ECF Nos. 34 at 4; 36 at ¶ 14.

6 On December 14, 2015, AlarmSIM sent an email to all Fortress’ customers
7 who had purchased its SIM cards. ECF No. 34 at 4. This email told customers
8 that that there was a serious risk to the proper functioning of their security systems
9 and existing companies were slow or absent in their response. ECF No. 36-1 at 9
10 (Ex. C). AlarmSIM announced that it had decided to introduce its own, new 3G
11 security panel. *Id.* AlarmSIM compared its panel to what is currently on the
12 market as “what a computer is to a calculator.” *Id.* Customers could click on a
13 link at the bottom of the email to order the new panel. *Id.* Defendants emphasize
14 that this email, claimed by Plaintiff as defamation, is not a cause of action under
15 Plaintiff’s Complaint. ECF No. 44 at 8.

16 In December 2015, AlarmSIM offered a live chat as part of its marketing
17 campaign. ECF No. 34 at 5. Fortress contacted the live chat line, which stated that
18

19 ³ Defendants assert that this SIM card is not the allegedly infringing product
20 and so does not relate to Plaintiff’s claims. ECF No. 44 at 8.

1 the system is “specifically designed to replace the Fortress systems.” ECF No. 36-
2 1 at 11 (Ex. D). Fortress claims that it received numerous communications from
3 customers seeking assurance that Fortress’ security systems were functional,
4 causing Fortress to devote substantial staff resources to address these issues. ECF
5 Nos. 34 at 5; 36 at ¶ 17. On December 23, 2015, AlarmSIM contacted Fortress
6 asking for a list of which Fortress systems were 2G, 3G, or 4G. ECF No. 36-1 at
7 14 (Ex. E). AlarmSIM also requested a sample of Fortress’ newer unit so that it
8 could offer support to users of that device.⁴ *Id.*

9 Fortress contends that AlarmSIM sent a copy of its December 14, 2015
10 email to at least 58 of Fortress’ customers who resided in Washington. ECF Nos.
11 34 at 5; 36 at ¶ 19; 36-1 at 16–17 (Ex. F). Fortress also claims that it received
12 numerous complaints from customers concerning the products and services
13 provided by AlarmSIM, including AlarmSIM’s customer service. ECF Nos. 34 at
14 6; 36 at ¶ 20. Fortress alleges that AlarmSIM’s new security systems were merely
15 copies of Fortress’ existing design and trade dress. ECF No. 34 at 6–7.

16 //

17 //

18
19 ⁴ Defendants assert that Fortress did not state that it provided the sample and
20 so AlarmSIM’s intentions are of no consequence. ECF No. 44 at 8–9.

DISCUSSION

I. Personal Jurisdiction

A motion to dismiss for lack of personal jurisdiction is governed by Federal Rule of Civil Procedure 12(b)(2). In opposing such a motion, the plaintiff bears the burden of establishing that jurisdiction is proper. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011). Where “the defendant’s motion is based on written materials rather than an evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdictional facts to withstand the motion to dismiss.” *Id.* (citation omitted). To satisfy this standard, a plaintiff “need only demonstrate facts that if true would support jurisdiction over the defendant.” *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003) (quotation and citation omitted). Uncontroverted allegations in the complaint must be taken as true. *Mavrix*, 647 F.3d at 1223 (citation omitted). The court “may not assume the truth of allegations in a pleading which are contradicted by affidavit,” but factual disputes are resolved in the plaintiff’s favor. *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1284 (9th Cir. 1977); *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006); *Mavrix*, 647 F.3d at 1223.

Personal jurisdiction in federal courts is determined by the law of the state in which it sits. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015). Washington state law permits personal jurisdiction over nonresidents and foreign

1 corporations to the full extent allowed by the Due Process Clause of the United
2 States Constitution. *Shute v. Carnival Cruise Lines*, 113 Wash.2d 763, 766-67
3 (1989). Under the Due Process Clause, a court may exercise personal jurisdiction
4 over a defendant only where “the defendant [has] certain minimum contacts with
5 the forum state such that the maintenance of the suit does not offend traditional
6 notions of fair play and substantial justice.” *Picot v. Weston*, 780 F.3d 1206, 1211
7 (9th Cir. 2015) (quoting *Int’l Shoe Co. v. State of Wash., Office of Unemployment*
8 *Comp. & Placement*, 326 U.S. 310, 316 (1945)) (internal quotation marks and
9 brackets omitted).

10 Personal jurisdiction over a nonresident defendant may take one of two
11 forms: general jurisdiction or specific jurisdiction. General jurisdiction requires
12 connections with the forum “so continuous and systematic as to render the foreign
13 corporation essentially at home in the forum State.” *Ranza*, 793 F.3d at 1064
14 (citation omitted). Specific jurisdiction will lie “when a case arises out of or
15 relates to the defendant’s contacts with the forum.” *Id.* at 1068 (quotation marks
16 and citation omitted).

17 **A. General Jurisdiction**

18 Plaintiff merely states the standard for general jurisdiction, but focuses its
19 argument on specific jurisdiction. ECF No. 34 at 15. General jurisdiction occurs
20 “only when the corporation’s affiliations with the State in which suit is brought are

1 so constant and pervasive ‘as to render [it] essentially at home in the forum State.”
2 *Daimler AG v. Bauman*, 134 S.Ct. 746, 751 (2014) (citing *Goodyear Dunlop Tires*
3 *Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). Here, the Court finds that
4 AlarmSIM is clearly not at home in Washington when it is a North Carolina
5 corporation. Plaintiff concedes that the Supreme Court established a high bar for
6 the quantity of contacts to arise to the level of continuous and systematic. ECF No.
7 34 at 15 (citing *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408,
8 416 (1984)). The Court finds that the 4% of AlarmSIM’s sales made to
9 Washington residents is itself insufficient to meet this high bar.

10 Accordingly, the Court concludes that even if Plaintiff is alleging general
11 jurisdiction, this claim would fail.

12 **B. Specific Jurisdiction**

13 The Ninth Circuit uses the following three-part test when determining if
14 specific personal jurisdiction exists:

15 (1) The non-resident defendant must purposefully direct his activities
16 or consummate some transaction with the forum or resident thereof; or
17 perform some act by which he purposefully avails himself of the
18 privilege of conducting activities in the forum, thereby invoking the
19 benefits and protections of its laws; (2) the claim must be one which
20 arises out of or relates to the defendant’s forum-related activities; and
(3) the exercise of jurisdiction must comport with fair play and
substantial justice, i.e. it must be reasonable.

1 *Mavrix*, 647 F.3d at 1227–28 (citation omitted) (emphasis in original). The
2 plaintiff has the burden of proving the first two prongs. *Id.* at 1228 (citing *Sher v.*
3 *Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990)). Once established, the burden shifts
4 to the defendant to set forth a “compelling case that the presence of some other
5 considerations would render jurisdiction unreasonable.” *Burger King Corp. v.*
6 *Rudzewicz*, 471 U.S. 462, 477 (1985).

7 **1. Purposeful Availment or Direction**

8 Plaintiff has asserted claims in both contract and tort. In contract cases,
9 courts typically analyze jurisdiction under purposeful availment. *Yahoo! Inc. v. La*
10 *Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006).
11 In tort cases, courts look to whether a defendant purposefully directed his activities
12 at the forum state. *Id.* The Court will therefore address both standards below.

13 **a. Purposeful availment**

14 An interactive website can create purposeful availment under the *Zippo* test,
15 which test was adopted by the Ninth Circuit. *Zippo Mfg. Co. v. Zippo Dot Com,*
16 *Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997); *Cybersell, Inc. v. Cybersell, Inc.*,
17 130 F.3d 414, 418 (9th Cir. 1997); *Mavrix*, 647 F.3d at 1226–27. Under the *Zippo*
18 sliding scale analysis, the likelihood of personal jurisdiction is “directly
19 proportionate to the nature and quality of commercial activity that an entity
20 conducts over the Internet.” *Zippo*, 952 F. Supp. at 1124. Jurisdiction is proper

1 where a defendant clearly does business over the Internet, such as when a
2 defendant enters into a contract with residents of a foreign jurisdiction that
3 “involve the knowing and repeated transmission of computer files over the
4 Internet.” *Id.* On the other end of the spectrum, a defendant who simply posts
5 information on a website that is accessible to foreign jurisdictions does not create
6 grounds for personal jurisdiction. *Id.* The court in *Zippo* found purposeful
7 availment based on the defendant’s interactive website and contracts with 3,000
8 individuals and seven Internet access providers in Pennsylvania, which allowed
9 them to download electronic messages forming the basis of the suit. *Id.*; *see*
10 *Cybersell*, 130 F.3d at 418.

11 Here, Defendants contend that its two websites were completely passive,
12 “allowing no interactivity between Defendant and the users of the website.” ECF
13 Nos. 17 at 10; 17-1 at ¶¶ 16–21. Plaintiff argues that Defendants’ website “falls on
14 the far end of the ‘interactive’ side of the sliding scale, as they allow users to select
15 and purchase products and have them shipped to the forum state.” ECF No. 34 at
16 16–17. Plaintiff contends that AlarmSIM’s website allowed Washington
17 customers to directly purchase its products, constituting purposeful availment. *Id.*
18 at 17. Plaintiff asserts that Defendants’ sales are far from *de minimis*, as they have
19 made at least 126 sales to Washington residents from June 2014 until March 2017,
20 which constitute 4% of its total sales. *Id.* at 18. Plaintiff suggest that this 4% is

1 greater than Defendants' per state average. *Id.* at 18 n. 20. Plaintiff also alleges
2 that AlarmSIM has only provided information through the ecommerce platform of
3 JotForm, not any additional sales made through Amazon or PayPal. *Id.* at 18.

4 Assuming the facts alleged by Plaintiff as true, it is likely that AlarmSIM's
5 website is more interactive than passive. A screenshot of AlarmSIM's website
6 shows that it sells items on its website, which can be added to a cart. ECF No. 35
7 at 24–25 (Ex. C). AlarmSIM did not merely post information on a website that
8 was accessible to Washington. AlarmSIM's claims that third parties processed
9 orders, collected money and shipped the product ignores that these third parties did
10 so at AlarmSIM's direction and for AlarmSIM's benefit.

11 Additionally, AlarmSIM did business with a Washington company.
12 AlarmSIM allegedly had an agreement with Fortress where Fortress would
13 recommend AlarmSIM SIM cards to its customers. AlarmSIM then emailed these
14 customers to sell them an allegedly infringing panel to replace the Fortress panel.
15 ECF No. 36-1 at 11 (Ex. D). Accepting these facts as true, it is then clear that
16 AlarmSIM's website falls closer to the interactive side of the spectrum.

17 Accordingly, the Court finds that AlarmSIM purposefully availed itself of
18 Washington jurisdiction by entering into an agreement with Fortress, selling to
19 Washington customers through its interactive website, and marketing to Fortress'
20 Washington customers with an allegedly infringing security system.

1 **b. Purposefully directed activities**

2 Even if AlarmSIM did not purposefully avail itself of Washington
3 jurisdiction, the Court finds that AlarmSIM purposefully directed its activities at
4 Washington. “In tort cases, we typically inquire whether a defendant ‘purposefully
5 direct[s] his activities’ at the forum state, applying an ‘effects’ test that focuses on
6 the forum in which the defendant’s actions were felt, whether or not the actions
7 themselves occurred within the forum.” *Mavrix*, 647 F.3d at 1228 (citing *Yahoo!*
8 *Inc.*, 433 F.3d at 1206). The *Calder* effects test⁵ requires that the defendant must
9 have allegedly “(1) committed an intentional act, (2) expressly aimed at the forum
10 state, (3) causing harm that the defendant knows is likely to be suffered in the
11 forum state.” *Id.* (citations omitted).

12 The first factor of the *Calder* test is met, as AlarmSIM allegedly tortuously
13 contacted Fortress’ customers in an effort to sell them infringing security systems.
14 ECF No. 34 at 19. Under the second *Calder* factor, Plaintiff contends that
15 Defendants’ intentional acts were expressly aimed at Washington State because
16 Defendants knew the impact of their willful actions would be felt by Fortress in
17 Washington. *Id.* at 21. The Ninth Circuit noted that a passive website in
18 conjunction with “something more” directly targeting the forum is sufficient.

19
20 ⁵ *Calder v. Jones*, 465 U.S. 783 (1984).

1 *Mavrix*, 647 F.3d at 1229 (citation omitted). In determining “something more,” the
2 Ninth Circuit considered several factors, specifically the interactivity of the
3 defendant’s website, the geographic scope of the defendant’s commercial
4 ambitions, and whether the defendant “individually targeted” a plaintiff known to
5 be a forum resident. *Id.* (citations omitted).

6 Under these factors and assuming the website is passive, Defendants argue
7 that AlarmSIM’s geographic scope was not aimed in Washington or the Northwest,
8 but stretched across North America. ECF Nos. 17 at 11; 17-1 at ¶¶ 32–33.
9 AlarmSIM also emphasizes that it in no way targeted Plaintiff or purposefully
10 directed any conduct at Plaintiff or other Washington residents. ECF No. 17 at 11–
11 12. Yet, assuming Plaintiff’s facts as true, Guthrie Jr. called Fortress seeking a
12 business partnership and knew that it was a Washington company. By continuing
13 a business relationship with Fortress and sending emails to Fortress customers in
14 Washington, AlarmSIM individually targeted Fortress and the Washington
15 jurisdiction. The Court finds that AlarmSIM purposefully committed an
16 intentional act aimed at the forum state.

17 Lastly, AlarmSIM would likely know that its allegedly tortious acts would
18 cause harm in Washington. “[A] corporation can suffer economic harm both
19 where the bad acts occurred and where the corporation has its principal place of
20 business.” *Mavrix*, 647 F.3d at 1231 (citing *Dole Food Co., Inc. v. Watts*, 303 F.3d

1 1104, 1113 (9th Cir. 2002)). The economic loss caused by intentionally infringing
2 and diluting the trade dress of Plaintiff's security system is foreseeable. It was also
3 foreseeable that this economic loss would be inflicted in Fortress' principal place
4 of business, Washington. ECF No. 1 at ¶ 1.

5 Accordingly, the Court finds that AlarmSIM purposefully directed its
6 activities at Washington and the first element of specific jurisdiction is met.

7 **2. Forum-Related Activities**

8 Plaintiff's claim must arise out of or relate to defendant's forum-related
9 activities. *See Mavrix*, 647 F.3d at 1227–28. Neither party can seriously dispute
10 this second element. It is clear that Plaintiff's claims arise from Defendants'
11 activity of allegedly infringing on a Washington corporation and marketing to
12 Washington customers. Therefore, the Court finds that the second element is also
13 met.

14 **3. Reasonableness Considerations**

15 Defendants bear the burden of setting forth a compelling case that the
16 exercise of jurisdiction would not be reasonable. *Burger King*, 471 U.S. at 477.
17 Relevant factors include “the burden on the defendant, the forum State's interest in
18 adjudicating the dispute, the plaintiff's interest in obtaining convenient and
19 effective relief, the interstate judicial system's interest in obtaining the most
20 efficient resolution of controversies, and the shared interest of the several States in

1 furthering fundamental substantive social policies.” *Bristol-Myers Squibb Co. v.*
2 *Superior Court of California, San Francisco Cnty.*, 137 S.Ct. 1773, 1786 (2017)
3 (citing *Burger King*, 471 U.S. at 477); *see also Asahi Metal Indus. Co. v. Superior*
4 *Court of California, Salano Cty.*, 480 U.S. 102, 113 (1987).

5 Defendants contend that the burden of defending in Washington would be
6 enormous or impossible for Defendants to bear. ECF Nos. 17 at 14; 18 at 10; 19 at
7 10; 20 at 11. Defendants emphasize that AlarmSIM is a non-functioning,
8 dissolved corporation. ECF No. 17 at 12. The individual Defendants assert that
9 they have never been to Washington, but defendants need not have “*physically*
10 enter[ed] the forum State” for jurisdiction to attach. *Burger King*, 471 U.S. at 476
11 (emphasis in original). Guthrie Jr. states he is a handyman in North Carolina with
12 no ties to Washington. ECF No. 18 at 8. Ramirez asserts that he is a
13 cosmetologist in North Carolina with no ties to Washington and he argues that he
14 only played a nominal role in the operations of AlarmSIM. ECF Nos. 19 at 8; 19-1
15 at ¶¶ 5–8. Similarly, Guthrie Sr. argues his position was only nominal and he
16 never played a role in the company. ECF Nos. 20 at 3; 20-1 at ¶¶ 5– 8.

17 In regards to the individual defendants, Plaintiff states that the Defendants
18 represented to the Federal Communications Commission that Guthrie Sr. was the
19 “Chairman or other Senior Officer” and Ramirez was the “President or other
20 Senior Officer.” ECF Nos. 34 at 22; 35 at 32 (Ex. E). Guthrie Jr. admitted he was

1 the managing member and stated that he normally referred to himself as co-
2 founder or owner. ECF Nos. 18-1 at ¶ 5; 34-1 at 25. AlarmSIM's website also
3 stated that it was a family owned business with Guthrie Jr. as the co-founder. ECF
4 NO. 35 at 35 (Ex. F). Plaintiff thus argues that Defendants had an active role in
5 forming and operating the family business. ECF No. 34 at 22. Plaintiff also
6 emphasizes that Guthrie Jr. testified that the initial percentage of membership
7 ownership was Guthrie Sr. at 40% and Ramirez at 20%, and Defendants never
8 changed the percentages. ECF No. 34-1 at 23. Guthrie Jr. also stated that the
9 headquarters of AlarmSIM was listed as Guthrie Sr.'s residence. *Id.* at 26.

10 Under the North Carolina Limited Liability Company Act, a member of a
11 North Carolina LLC is not necessarily liable for the obligations of the LLC. "A
12 person who is an interest owner, manager, or other company official is not liable
13 for the obligations of the LLC solely by reason of being an interest owner,
14 manager, or other company official." N.C. GEN. STAT. § 57D-3-30. Plaintiff
15 asserts that Ramirez and Guthrie Sr. personally made sales, but supply no facts for
16 this assertion. ECF No. 34 at 23. While uncontroverted allegations in the
17 Complaint must be taken as true, Defendants have supplied affidavits attesting that
18 Ramirez and Guthrie Sr. were only nominal members who did not participate in
19 the company. *See* ECF Nos. 19-1 at ¶¶ 5-8; 20-1 at ¶¶ 5-8; *Mavrix*, 647 F.3d at
20 1223; *Data Disc*, 557 F.2d at 1280; *Pebble Beach*, 453 F.3d at 1154. The Court

1 finds that Ramirez and Guthrie Sr.'s nominal participation in AlarmSIM where
2 they likely could not be held liable under North Carolina's LLC Act is persuasive
3 in showing that holding them subject to jurisdiction in Washington would be
4 unreasonable. The Court determines that Defendants set forth a compelling case
5 that the exercise of jurisdiction over Ramirez and Guthrie Sr. is unreasonable.

6 Additionally, Defendants state that North Carolina likely has as great an
7 interest in the litigation as Washington. ECF No. 17 at 14. Yet, the Court does not
8 find this argument compelling where the alleged wrongdoer is from North
9 Carolina, but the alleged victims and others affected are a Washington corporation
10 and Washington residents. Washington then has an interest in adjudicating this
11 suit to protect its residents and corporation.

12 Defendants also express concern that every jurisdiction in which one of their
13 products was sold could contend an interest equal to Washington. *Id.* Yet,
14 jurisdiction is reasonable in Washington because AlarmSIM allegedly sought an
15 agreement with a Washington corporation and allegedly infringed on a Washington
16 trade dress. If Defendants infringed on a corporation's trade dress in every state
17 then Defendants' concern would be justified, but merely the concern that
18 AlarmSIM sold a product in every state is not a compelling reason to find
19 jurisdiction here unreasonable. Defendants' argument that jurisdiction offends
20 traditional notions of fair play because Defendants could never have predicted they

1 might be forced to defend themselves in Washington is also not compelling where
2 AlarmSIM allegedly sought out a Washington corporation and marketed to
3 Washington customers.

4 Accordingly, the Court finds that jurisdiction over AlarmSIM and Guthrie
5 Jr. is reasonable, as Defendants fail to show how jurisdiction in Washington would
6 be an enormous burden. AlarmSIM, by and through its owner and co-founder
7 Guthrie Jr., sought an agreement with a Washington corporation and marketed to
8 Washington residents, thereby purposefully availing and directing its activities at
9 Washington. Yet, holding Guthrie Sr. and Ramirez liable in Washington would be
10 unreasonable considering there are no facts revealing that they conducted any acts
11 in regards to AlarmSIM or the allegedly infringing conduct in Washington. The
12 Court grants dismissal of all claims against Guthrie Sr. and Ramirez for lack of
13 personal jurisdiction, but denies the dismissal in regards to AlarmSIM and Guthrie
14 Jr.

15 **II. Venue**

16 While Plaintiff fails to address Defendants' argument in their motions to
17 dismiss that venue is improper, Plaintiff correctly asserted venue in its Complaint.
18 ECF No. 1 at ¶ 8. Under 28 U.S.C. § 1391(b)(1), a civil action may be brought in
19 "a judicial district in which defendant resides, if all defendants are residents of the
20 State in which the district is located." 28 U.S.C. § 1391(b)(1). Under 28 U.S.C. §

1 1391(c)(2), a corporation “shall be deemed to reside, if a defendant, in any judicial
2 district in which such defendant is subject to the court’s personal jurisdiction with
3 respect to the civil action in question.” 28 U.S.C. § 1391(c)(2); *see also Zippo*,
4 952 F. Supp. at 1128 (finding that venue was proper over the corporate defendant
5 Dot Com due to the court’s previous finding of personal jurisdiction). Therefore,
6 venue of AlarmSIM in Washington would be proper because it is a corporation and
7 thus resides where there is personal jurisdiction, meaning the Eastern District of
8 Washington. Yet, unlike *Zippo*, AlarmSIM is not the only defendant and Guthrie
9 Jr. does not reside in Washington.

10 Venue is still proper over both Defendants in Washington under 28 U.S.C.
11 § 1391(b)(2). Venue is proper where “a substantial part of the events or omissions
12 giving rise to the claim occurred, or a substantial part of property that is the subject
13 of the action is situated.” 28 U.S.C. § 1391(b)(2). Defendants contend that
14 Plaintiff failed to allege a single specific occurrence in Washington that gave rise
15 to the claim. ECF No. 17 at 15. Yet, the Court disagrees and finds that Plaintiff
16 sufficiently alleged that 4% of AlarmSIM’s gross sales were products sold to
17 Washington residents. AlarmSIM marketed with allegedly false material and
18 infringing products to 126 Washington residents. ECF No. 34 at 18. These
19 occurrences in Washington are sufficient to establish venue over AlarmSIM and
20 Guthrie Jr. as the owner and cofounder of AlarmSIM.

1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. Defendant AlarmSIM's Motion to Dismiss (ECF No. 17) is **DENIED**.

3 2. Defendant Guthrie Jr.'s Motion to Dismiss (ECF No. 18) is **DENIED**.

4 3. Defendant Ramirez's Motion to Dismiss (ECF No. 19) is **GRANTED**.

5 4. Defendant Guthrie Sr.'s Motion to Dismiss (ECF No. 20) is **GRANTED**.

6 The District Court Executive is directed to enter this Order, furnish copies to
7 counsel, and terminate Defendants Ramirez and Guthrie Sr. from this matter.

8 **DATED** November 29, 2017.



11
12
13
14
15
16
17
18
19
20

Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge